U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 02 2009

LIN 07 030 52796

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Mari Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an internet security service provider. It seeks to employ the beneficiary permanently in the United States as a quality assurance engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the alien employment certification. Specifically, the director determined that the beneficiary did not possess a U.S. baccalaureate or foreign equivalent degree in the requisite field. The director also raised concerns about the petitioner's ability to pay the proffered wage.

On appeal, counsel submitted a brief and additional evidence. On November 17, 2008, this office issued a notice advising the petitioner of information that contradicted the credential evaluations of record and afforded the petitioner an opportunity to resolve the inconsistencies noted. The petitioner was afforded 30 days to respond. As of this date, more than 30 days later, we have received no response. For the reasons discussed below, the petitioner has overcome the director's valid concerns regarding the petitioner's ability to pay the proffered wage. The petitioner has not, however, overcome the director's conclusions regarding the beneficiary's qualifications for the job offered.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Ability to Pay the Proffered Wage

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director

> may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the ETA Form 9089 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). Here, the ETA Form 9089 was accepted for processing on September 11, 2006. The proffered wage as stated on the ETA Form 9089 is $92,400 annually or $3,553.85 biweekly. On Part K of the ETA Form 9089, signed by the beneficiary, the beneficiary claimed to have worked for the petitioner as of January 6, 2003.

On the petition, the petitioner claimed to have an establishment date in 1999, a gross annual income of $10 million, no net income and 122 employees. In support of the petition, the petitioner submitted a letter from its Vice President of Human Resources affirming the company's ability to pay the proffered wage and audited financial statements showing net losses and current liabilities that exceed current assets.

The director determined that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

On appeal, the petitioner submits the beneficiary's Form W-2 for 2005 reflecting wages of $86,493.40 in 2005 and pay statements reflecting wages of $3,850 from November 1, 2006 through December 15, 2006. As of December 16, 2006, the beneficiary had been paid year to date wages of $88,000.01.

Where the petitioner has submitted the requisite initial documentation required in the regulation at 8 C.F.R. § 204.5(g)(2), U.S. Citizenship and Immigration Services (USCIS) will first examine whether the petitioner employed and paid the beneficiary during the relevant period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner submitted audited financial statements. On appeal, the petitioner has now established that it paid the beneficiary only $5,906.60 less than the proffered wage in 2005 (before the priority date) and began paying the beneficiary more than the proffered wage by at least November 1, 2006, shortly after the priority date. As stated above, the petitioner employs over 100 workers. Thus, the petitioner's letter affirming its ability to pay the full proffered wage is sufficiently credible.

Equivalency of Alien's Education

The beneficiary possesses a three-year Bachelor of Science from Nagarjuna University and his Master of Science in Applied Chemistry from Rani Durgavati Vishwavidyalaya. It is not contested that the beneficiary's Master's Degree is in a subject unrelated to the one specified on the alien employment certification. Rather, it is the petitioner's position that the beneficiary's baccalaureate degree, on its own, is a foreign equivalent degree to a U.S. baccalaureate in one of the fields specified on the alien employment certification.

The record contains evaluations from [redacted] of Career Consulting International (CCI), and [redacted] of Marquess Educational Consultants. Both [redacted] and [redacted] conclude that the beneficiary's baccalaureate constituted the completion of 120 credits and is equivalent to a U.S. baccalaureate in Mathematics, Chemistry and Physics. [redacted] reaches this conclusion by assigning four credits to each course the beneficiary took. While she explains on page 4 that her "process" includes using "unit credits" or "clock hours of instruction" from academic records to determine the number of credits, the beneficiary's transcript in the record does not include either figure. [redacted] and [redacted] both reference "Carnegie units" and cite a Colorado Christian University website for the definition of this unit. In our previous notice, however, this office advised the petitioner that the Carnegie Foundation's own website, http://www.carnegiefoundation.org/general/sub.asp?key=17&subkey=1874&topkey=17 (accessed November 6, 2008 and incorporated into the record of proceedings), states that the Carnegie unit is relevant only for "college preparatory coursework." 14 units are required for admission to college. *Id.*

While [redacted] indicates that she is a member of the American Evaluation Association (AEA), the Association of International Educators (NAFSA) and the European Association for International Education (EAIE), the record does not indicate what these organizations require for membership. As noted in our previous notice, we have reviewed the websites of these associations, and none of the associations require anything other than the payment of dues.[3] We were also unable to confirm CCI's membership in EAIE.[4] Regardless, the payment of dues does not confer any expertise. Dr. Kersey also claims on page 3 expertise as an "educator." His brief biography at the end of his evaluation makes no mention of employment as a professor other than an "honorary professorship from India" although he does claim to be the principal of St. Simon's College in London. As noted in our previous notice, we were unable to confirm the existence of this school on the Internet. Dr. [redacted] relies on an article coauthored with [redacted]. As noted in our previous decision, the record contains no evidence that this article has been published in a peer-reviewed publication. Rather, it has been posted on various Internet websites of unknown significance. Moreover, the article is not persuasive. The article includes British colleges that accept three-year degrees for admission to graduate school but concedes that "a number of other universities" would not accept

---

[1] [redacted] indicates that she has a Master's degree from the Institute of Transpersonal Psychology and a doctorate from Ecole Superieure Robert de Sorbon but does not indicate the field in which she obtained her doctorate. According to its website, www.sorbon.fr/index1.html, Ecole Superieure Robert de Sorbon awards degrees based on past experience.

[2] [redacted] indicates he has a "canonical diploma of Sacræ Theologiæ Professor" from St. David's Oecumenical Institute of Divinity, which he equates to a Doctorate of Divinity. We were unable to find any reference to this institution on the Internet.

[3] The bylaws for the AEA, accessed on November 6, 2008 at www.eval.org/aboutus/bylaws.asp, indicate: "Any individual interested in the purposes of the Association shall be eligible for membership." The bylaws for NAFSA, downloaded from www.nafsa.org on November 6, 2008, do not provide any specific requirements for members in Article II other than the payment of dues. Voting members must be individuals working in educational institutions, training or research facilities, organizations involved with international education or those employed independently.

[4] *See* www.eaie.org/membership/teaser.asp?country=USA (accessed November 6, 2008).

three-year degrees for admission to graduate school. Similarly, the article lists some U.S. universities that accept three-year degrees for admission to graduate school but acknowledges that others do not. In fact, the article concedes:

> None of the members of N.A.C.E.S. who were approached were willing to grant equivalency to a bachelor's degree from a regionally accredited institution in the United States, although we heard anecdotally that one, W.E.S. had been interested in doing so.
>
> In this process, we encountered a number of the objections to equivalency that have already been discussed.
>
> [redacted]., President of Educational Credential Evaluators, Inc., commented thus,
>
> "Contrary to your statement, a degree from a three-year "Bologna Process" bachelor's degree program in Europe will NOT be accepted as a degree by the majority of universities in the Untied States. Similarly, the majority do not accept a bachelor's degree from a three-year program in India or any other country except England. England is a unique situation because of the specialized nature of Form VI."
>
> * * *
>
> International Education Consultants of Delaware, Inc., raise similar objections to those raised by ECE.,
>
> "The Indian educational system, along with that of Canada and some other countries, generally adopted the UK-pattern 3-year degree. But the UK retained the important preliminary A level examinations. These examinations are used for advanced standing credit in the UK; we follow their lead, and use those examinations to constitute the an [sic] additional year of undergraduate study. The combination of these two entities is equivalent to a 4-year US Bachelor's degree.
>
> The Indian educational system dropped that advanced standing year. You enter a 3-year Indian degree program directly from Year 12 of your education. In the US, there are no degree programs entered from a stage lower than Year 12, and there are no 3-year degree programs. Without the additional advanced standing year, there's no equivalency.

Finally, these materials do not examine whether those few U.S. institutions that may accept a three-year degree for graduate admission do so on the condition that the holder of a three-year degree complete extra credits.

The petitioner also submitted 138 pages of UNESCO materials, only two of which are relevant. The relevant language relates to "recognition" of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

> 'Recognition" of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State an deemed comparable, for the purposes of access to or further pursuit of higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition.

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.

also relies on other opinion letters, none of which carry the weight of peer-reviewed published materials on evaluating Indian degrees.

On appeal, the petitioner submitted a document entitled "Study Particulars" prepared by Hindu College, Guntur, part of Nagarjuna University, which indicates that the beneficiary completed a total of 1,940 hours, including 506 hours of Physics, 506 hours of Chemistry and 408 hours of Math. The record contains no explanation as to how this document compares with the evaluations stating that the beneficiary completed 120 credit hours total. The petitioner also submitted Internet materials from Dallas Baptist University indicating they require 126 credits hours for a baccalaureate and from the University of Iowa indicating they require 120 credit hours for a baccalaureate. The petitioner did not submit information about the number of math credits required for a baccalaureate in math.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

Given the above inconsistencies, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). As stated in our previous notice, AACRAO, according to its website, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." AACRAO, http://www.aacrao.org/about/ (accessed November 6, 2008) (copy incorporated into the record of proceeding). Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." *Id.* According to the login page, EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO. Dale E. Gough, Director of International Education Services, "AACRAO EDGE Login," http://aacraoedge.aacrao.org/index.php (accessed November 6, 2008, 2008) (copy incorporated into the record of proceeding).

Authors for EDGE are not merely expressing their personal opinions. Rather, authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. "An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available for download at www.aacrao.org/publications/guide_to_creating_international_publications.pdf. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

Our notice advised the petitioner that while the director appears to have accepted that the beneficiary's Master of Science in Chemistry is equivalent to a U.S. Master's degree, the section in EDGE relating to the Indian educational system provides that a Master's degree following a three-year bachelor's degree "represents the attainment of a level of education comparable to a bachelor's degree in the United States."

More significantly, EDGE provides the following information regarding a three-year Bachelor of Science from India: "The Bachelor of Arts/Bachelor of Commerce/Bachelor of Science represents attainment of a level of education comparable to two to three years of university study in the United States. Credit may be awarded on a course-by-course basis."

Based on this juried opinion, the AAO concluded that the beneficiary's baccalaureate in this matter is only equivalent to three years of undergraduate education from a regionally accredited institution in the United States.

The AAO also noted that AACRAO's Project for International Education Research (PIER) publications also contradict the evaluations submitted on appeal. Significantly, the petitioner submitted the covers of *A P.I.E.R. Workshop Report on South Asia: The Admission and Placement of Students from Bangladesh, India, Pakistan and Sri Lanka* (1986) and the *P.I.E.R. World Education Series India: A Special Report on the Higher Education System and Guide to the Placement of Students in Educational Institutions in the United States* (1997). Yet, the petitioner did not submit copies of any

of the contents of either publication that might support the evaluations contained in the record. Instead, the petitioner submits an opinion piece in *ADSEC News* by [redacted] from April 2005 quoted in Dr. [redacted] evaluation. We acknowledge that this opinion article proposes the possibility of considering a three-year degree *after* completion of a CBSE or CISCE-Grade secondary school certificate as equivalent to a U.S. baccalaureate. The record in this matter, however, contains no evidence the beneficiary received a CBSE or CISCE-Grade secondary school certificate before attending Nagarjuna University. In all other situations, the *ADSEC News* opinion piece recommends only that a three-year baccalaureate in combination *with a postgraduate diploma* be considered for graduate admission. This opinion piece is not consistent with the evaluations asserting that the beneficiary's three-year degree alone is equivalent to a four-year baccalaureate in the United States. Regardless, the record contains no evidence that any peer-reviewed publication on evaluating Indian degrees has adopted the opinion expressed in the *ADSEC News* piece. Significantly, [redacted] is also the author of the peer-reviewed EDGE materials referenced above, which supersedes the 2005 non-juried opinion piece in *ADSEC News.*

One of the PIER publications also reveals that a year-for-year analysis is an accurate way to evaluate Indian post-secondary education. *A P.I.E.R. Workshop Report on South Asia* at I80 explicitly states that "transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year." The chart that follows states that 12 years of primary and secondary education followed by a three-year baccalaureate "may be considered for undergraduate admission with possible advanced standing up to three years (0-90 semester credits) to be determined through a course to course analysis." This information seriously undermines the evaluations submitted from [redacted] and [redacted] both of whom attempt to assign credits hours for the beneficiary's three-year baccalaureate that are equal to the 120 credits typically required for a U.S. baccalaureate.

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977). While we will consider claims that a particular program less than four year in duration is accelerated, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not resolved the internal inconsistencies between the evaluations submitted and the EDGE and PIER materials discussed above. Thus, the petitioner has not demonstrated that the beneficiary's three-year degree from Nagarjuna University is a foreign equivalent degree to a U.S. baccalaureate.

Qualifications for the Job Offered

As noted above, the ETA Form 9089 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.,* 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit).

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)[(5)], 8 U.S.C. § 1182(a)[(5)]. **The INS then makes its own** determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu, 736 F. 2d at 1309.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

On the ETA Form 9089, Part H, the petitioner indicated that a bachelor's degree in Computer Science or Electrical Engineering plus 60 months of experience is required for the job. The petitioner indicated that Mathematics was an acceptable alternative field of study. The petitioner did not indicate that an alternate combination of experience and education would be acceptable. The petitioner did indicate that a foreign educational equivalent is acceptable. Thus, regardless of whether the beneficiary qualifies as a member of the professions holding an advanced degree, the petitioner must demonstrate that he has a bachelor's degree in one of the requisite fields or a foreign educational equivalent.

As stated above, the petitioner has not resolved the inconsistencies relating to the beneficiary's credentials such that we can conclude that the beneficiary has the foreign educational equivalence to a U.S. baccalaureate. Moreover, it is not clear that the beneficiary's degree is the foreign educational equivalence to a U.S. baccalaureate in one of the subjects listed on the alien employment certification: Computer Science, Electrical Engineering or Mathematics. The evaluations conclude that the beneficiary's three-year degree, purportedly equivalent to 120 credits, is a degree in Math, Chemistry and Physics. The petitioner has not established that it is possible to obtain a U.S. or foreign equivalent baccalaureate with a major concentration in three separate subjects with only 120 total credits. The record does not establish that the beneficiary's math credits correspond with the math credits required for a U.S. baccalaureate in math. Thus, the petitioner has not established that the beneficiary meets the requirements of the alien employment certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.